

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MEMORANDUM ORDER

JOY FLOWERS CONTI, Chief District Judge.

Plaintiff Impact Applications, Inc. (“plaintiff”), commenced this action on April 22, 2013. The case was referred to a United States Magistrate Judge for pretrial proceedings in accordance with Magistrate Judges Act, 28 U.S.C. § 636(b)(1) and Local Rules of Court 72.C and 72.D.

Defendants CNS Vital Signs and Pearson (US) (collectively “defendants”) filed a motion to dismiss [ECF Nos. 20, 22] on July 1, 2013. The magistrate judge’s Report and Recommendation [ECF No. 31] filed September 26, 2013 recommended that defendants’ motion to dismiss be granted, and plaintiff’s claims be dismissed without prejudice to amend the complaint consistent with the standards set forth in *Twombly/Iqbal*. *See* Rep. and Rec. [ECF No. 31] at 11-12. Service of the Report and Recommendation was made on all parties. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2, they had fourteen (14) days, until October 15, 2013, to file any objections. Defendants object to the Report and Recommendation on the basis that allowing plaintiff to amend its complaint would be futile. *See* Defs.’ Obj. [ECF No. 32]. Plaintiff filed a response to defendants’ objections claiming that the complaint does not lay out the entirety of

plaintiff's case against defendants. Pl.'s Resp. to Obj. [ECF No. 34] at 3.

For the reasons set forth in the Report and Recommendation, this court finds that the complaint does not adequately state enough facts to support a claim for copyright infringement pursuant to 17 U.S.C. § 501 or trademark infringement pursuant to 15 U.S.C. § 1114. Federal Rule of Civil Procedure provides that "the court should freely give leave [to amend a complaint] when justice so requires." Fed. R. Civ. P. 15(a). A court, however, need not grant leave to amend where it is "apparent from the record that '(1) the moving party has demonstrated undue delay, bad faith or dilatory motives, or (2) the amendment would be futile, or (3) the amendment would prejudice the other party.'" *U.S. Fire Ins. Co. v. Kelman Brothers*, D.C. No. 2-11-cv-00891, 2013 WL 5303261, at *7 (3d Cir. Sept. 23, 2013) (quoting *Lake v. Arnold*, 232 F.3d 360, 373 (3d Cir. 2000)).

Because a district court has wide discretion in allowing plaintiffs to amend their complaints, the court, in the interest of justice, will permit plaintiff to amend its complaint to bring proper copyright and trademark infringement claims against defendants to the extent that amendment would not be futile. The magistrate judge recommended dismissal because the complaint was devoid of any facts to support plaintiff's claims. It is not apparent from the record that amendment would be futile because the court does not have before it a proposed amended complaint to make such a determination. As such, plaintiff shall file a motion to amend its complaint and attach a proposed amended complaint as an exhibit for the court to determine whether, if amended, plaintiff's claims would be sufficient to state a claim.

Accordingly, after a *de novo* review of the pleadings and documents in this case, together with the Report and Recommendation, and pleadings thereto, the following order is entered:

AND NOW, this 5th day of November, 2013, IT IS HEREBY ORDERED that

Defendants' Motion to Dismiss [ECF Nos. 20, 22] are granted and plaintiff's claims are dismissed without prejudice;

IT IS FURTHER ORDERED that Plaintiff is to file a motion to amend its complaint by November 25, 2013;

IT IS FURTHER ORDERED that Defendants are to respond by December 9, 2013;

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Robert C. Mitchell is hereby adopted as the Opinion of the District Court.

By the Court,

/s/ Joy Flowers Conti

The Honorable Joy Flowers Conti
United States Chief District Judge

cc: all counsel of record via CM/ECF electronic filing